

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

NETRATINGS, INC.,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 05-314 GMS
)	
COREMETRICS, INC.,)	
)	
Defendant.)	

ORDER

WHEREAS, on July 6, 2006, the court held a *Markman* claim construction hearing in the above-captioned action;

WHEREAS, during the *Markman* hearing, the court asked the plaintiff whether it would be able to propose constructions for certain “instructions” terms of U.S. Patent No. 6,108,637 (the “‘637 patent”), in the event that the court found the terms to be governed by 35 U.S.C. § 112(6);¹

WHEREAS, the plaintiff indicated that it would be able to provide the court with additional constructions for the “instructions” terms at issue if the court concluded that the defendant had overcome the presumption against applying 35 U.S.C. § 112(6);² and

WHEREAS, after having considered the ‘637 patent specification and claims, as well as the pertinent case law, the court concludes that the defendant has overcome the presumption against applying 35 U.S.C. § 112(6) to most of the “instructions” terms at issue,³ because the “instructions”

¹ See Transcript of *Markman* Hearing, dated July 6, 2006 (“Tr.”), at 161:4-7.

² See Id. at 161:17-18; 162:1-22.

³ The court concludes that 35 U.S.C. § 112(6) applies to all of the “instructions” terms of the ‘637 patent but the following: “instructions for monitoring display of the content;” “display instruction;” and “instructions for monitoring display of content by the computer system to produce monitoring information regarding the display of the content, wherein the monitoring

terms “rel[y] on functional terms rather than structure or material to describe the performance of the claimed function”;⁴

IT IS HEREBY ORDERED that:

1. The parties are to submit further briefing with respect to the “instructions” terms referenced in this Order.
2. The plaintiff shall file a ten (10) page opening brief within five (5) days of the date of this Order.
3. The defendant shall file a ten (10) page answering brief within five (5) days of the date of service of the plaintiff’s opening brief.
4. The plaintiff shall file a five (5) page reply brief within three (3) days of the date of service of the defendant’s answering brief.

Dated: August 2, 2006

/s/ Gregory M. Sleet
UNITED STATES DISTRICT JUDGE

instructions are integrated with the display instructions such that execution of the display instructions causes execution of the monitoring instructions.” Therefore, the court will not entertain further briefing on the above-mentioned terms.

⁴ *Micro Chem., Inc. v. Great Plains Chem. Co., Inc.*, 194 F.3d 1250, 1257 (Fed. Cir. 1999) (citation omitted).